SEP 9 1982

Y 1.1/5:97-519

ORIGINAL

Calendar No. 747

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-519

COMPLETED

29

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT AMENDMENTS OF 1982

AUGUST 10 (legislative day, JULY 12), 1982.—Ordered to be printed

---

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2450]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2450) to authorize funds for the Magnuson Fishery Conservation and Management Act for fiscal years 1983, 1984, and 1985 to improve conservation and management of our Nation's fisheries, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF BILL

The primary goal of these amendments to the Magnuson Fishery Conservation and Management Act (MFCMA) is to streamline the process by which fishery management plans are prepared, approved and implemented.

Although the MFCMA has generally worked well, there are some deficiencies. Most of these center on the fact that the act's procedural requirements sometimes hinder the prompt action which is fundamental to sound fishery management.

Through these amendments, the Committee hopes to minimize delays and to improve several non-procedural provisions of the act.

BACKGROUND AND NEED

Since the MFCMA was enacted in 1976, amendments to it have usually addressed issues that were not contemplated by the origi-

89-010 O

BEST DOCUMENT AVAILABLE

nal drafters or reflected changes in Congressional attitudes on policy matters. S. 2450 is the first attempt to provide a set of comprehensive amendments aimed at improving the day-to-day functioning of the act.

The eight Regional Fishery Management Councils have held a number of meetings during 1981 and 1982 to discuss changes in the act which they felt would be beneficial. The Committee has tried to accommodate the Council's requested changes wherever possible.

The bill addresses problems in the following general areas:

1. Our relationship with the foreign nations wishing to fish in U.S waters;
2. The preparation of fishery management plans by the Regional Councils;
3. Internal functioning of the Councils;
4. Secretarial review, approval, and implementation of fishery management plans;
5. The relationship between State and Federal fishery managers;
6. Burdensome paperwork and regulatory requirements; and
7. Obstacles to continued development of fishery resources in the fishery conservation zone by the U.S. seafood industry.

LEGISLATIVE HISTORY

A formal staff working draft of amendments to the Magnuson Fishery Conservation and Management Act was circulated to interested parties on March 17, 1982. This draft was the result of suggestions received from throughout the U.S. seafood industry (including both commercial and recreational user groups), environmental groups and State and Federal fishery managers.

After a review of comments on the March 17 draft made by these same groups, Senator Packwood introduced S. 2450 on April 28, 1982. The bill was cosponsored by Senators Stevens and Gorton.

A full Senate Commerce Committee hearing on S. 2450 was held on April 30, 1982. Oral testimony was received from some 18 witnesses, with many more submitting comments.

Further revisions were then made to the amendment package based upon comments received at the hearing.

S. 2450 was ordered reported by the full Commerce Committee on July 14, 1982 by a vote of 17–0.

SUMMARY OF MAJOR PROVISIONS

Section 3

Requires the State Department to cut the allocation of fish to any nation which violates fishing "understandings or agreements" it has with the United States. The purpose is to give Congressional backing to the State Department's policy of encouraging foreign fishing nations to assist the United States with development of the domestic fishing industry.

Section 11

Relieves the Regional Councils of the overlay of bureaucratic rules established under the Federal Advisory Committee Act

BEST DOCUMENT AVAILABLE

(FACA) but provides public participation guarantees parallel to those in FACA.

Section 13

Requires the Regional Councils to include proposed fishery management regulations in all fishery management plans they submit to the Secretary of Commerce for his review and approval.

Section 15

Limits the Secretary's review authority over fishery management plans to disapproval only. Currently, the Secretary must formally approve all plans before they take effect. Under this proposal a plan would be deemed approved (at the end of 60 days) unless the Secretary formally disapproves all, or part, of the plan.

Since the Councils are required under section 13 to include proposed regulations in their management plans this procedure will have the effect of speeding up the implementation of fishery regulations.

Section 16

Requires the Secretary to publish for comment the Councils' proposed fishery regulations promptly after he receives them. This will permit final regulations to take effect more quickly once the Secretary has decided whether or not to disapprove a fishery management plan. This section also restructures the process for implementation of emergency regulations by specifying requirements which must be met for the Secretary or a Council to act under emergency authority.

Section 17

Exempts the MFCMA from certain time and procedure requirements imposed by the Paperwork Reduction Act, the Regulatory Flexibility Act, and Executive Order 12291. The Committee has endeavored to include in the required act all the necessary time and procedural standards necessary to maintain a proper public role in fishery management procedures.

Section 21

Eliminates annual Council reports and Secretarial enforcement reports. This eliminates a significant paperwork burden.

Section 22

Creates a single, revolving foreign fishing observer fund to be used by the Secretary of Commerce in assuring 100 percent coverage of foreign vessels by U.S. observers.

Section 23

Requires the Regional Councils to "assess and specify" the effects which anadromous fish management plans will have on the major stocks of naturally spawning fish in the Region.

BEST DOCUMENT AVAILABLE

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., July 23, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, 5202 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget, Act of 1974, the Congressional Budget Office has reviewed S. 2450, the Magnuson Fishery Conservation and Management Act Amendments of 1982, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, July 14, 1982.

S. 2450 would make a number of changes to the Fishery Conservation and Management Act in an effort to streamline the process by which fishery management plans are prepared, approved and implemented. These changes are not expected to have any significant budget impact.

In addition, the bill would grant the Secretary of Commerce direct spending authority from the Foreign Fishing Observer Fund, which is presently subject to appropriation action. The Secretary would use fees collected from owners of foreign fishing vessels to cover the costs of providing observers aboard such vessels, as well as necessary support and analysis costs. Converting the special fund to a revolving fund would result in no net budget impact, although it removes fund spending from the appropriation process. An estimated $14 million would be spent in 1983, offset by receipts of approximately the same amount. The estimated receipts, as well as outlays, are estimated to increase by about $1 million per year thereafter.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

No additional businesses or individuals will become subject to regulation as a result of this measure. In fact, the regulatory burden is somewhat lessened by this measure. Section 22 would cost foreign fishing companies an additional $10 million over what the act cost them in 1982. Possible economic costs to the U.S. industry under section 14 would not be significant.

Under section 14, there could be an increase in paperwork, and a slight impact on privacy, if the Secretary decided to implement an

BEST DOCUMENT AVAILABLE

expanded data collection program. However, there will be a significant reduction in paperwork under the provisions of sections 11, 13, 15, 17, and 21, all of which are designed to streamline the operating and reporting procedures now required of the Regional Councils and the Commerce Department.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

Ths act may be cited as the "Magnuson Fishery Conservation and Management Act Amendments of 1982."

SECTION 2.—REFERENCE

This provision permits all amendments to the MFCMA to be expressed in the bill simply as amendments to particular sections or subsections without repeated references to MFCMA.

SECTION 3.—REDUCTION OF ALLOCATION

This section provides the State and Commerce Departments with specific legislative authority to reduce the fishery allocation of any foreign nation which violates fishing "understandings or agreements" with the United States. If the Secretary of State and the Secretary of Commerce find that a nation is in such violation, then they are required to reduce that nation's allocation by an unspecified amount.

In the view of the Committee, foreign nations have too long been able to harvest vast quantities of U.S. fishery resources without having to properly compensate the United States. Such compensation may take a number of forms: financial reimbursement, technical assistance, fisheries trade concessions, cooperative research, or business agreements which assist the development of the American seafood industry (such as joint ventures).

Since the enactment of MFCMA in 1976, some nations which fish in the U.S. fishery conservation zone have been more cooperative than others regarding such compensation. The Committee is interested in seeing that those foreign nations which are most cooperative are rewarded by being given favorable treatment under U.S. fishery policies. Similarly, those nations which are not cooperative should receive less favorable consideration.

In the Committee's view the enactment of the amendment in section 3 will insure that the Secretary of State and the Secretary of Commerce maintain, through adjustments to fishery allocations, the proper balance between those nations which are cooperative and those which are not.

The Committee also wishes to emphasize its continuing support for the concept of phased allocations now being used by the Department of State. The purpose of this policy is to encourage participation by foreign fishing nations in measures which assisted the development of the Amercian seafood industry, and it is a policy which has worked well for the U.S. industry.

BEST DOCUMENT

SECTION 4.—FOREIGN FISHING PERMITS

This section slightly expands the amount of technical information foreign nations are required to include in their applications for permits to fish in the U.S. fishery conservation zone.

The section also changes the process by which copies of the permits are distributed to interested parties. The Regional Fishery Management Councils will no longer automatically receive copies of all permit applications. However, to make sure this change does not create a new problem, the Committee wishes to make it clear that any Council which wishes to continue receiving copies of all pertinent permit applications may do so by making such a request to the Secretary of State.

SECTION 5.—FOREIGN RECREATIONAL FISHING

This section outlines the specific circumstances under which foreign fishing vessels may engage in recreational fishing in the U.S. fishery conservation zone and State waters. Such foreign recreational fishing, including tournament fishing, would be conducted under such conditions as required by the Secretary of Commerce and the Governors of affected States. To be eligible for fishing under this provision a foreign vessel must not be operated for profit.

SECTION 6.—NATIONAL STANDARDS

This section clarifies the fact that the fishery management plan development guidelines prepared by the Secretary of Commerce do not have the force of law. They are only intended to be advisory in nature.

SECTION 7.—NORTHERN MARIANA ISLANDS

This section alters the membership of the Western Pacific Fishery Management Council to include the Northern Mariana Islands.

SECTION 8.—APPOINTMENT OF MEMBERS BY THE SECRETARY

This section amends the process by which the Secretary appoints members to the Regional Fishery Management Councils. The changes are intended to insure that only qualified individuals are nominated; that appointments are made in a timely fashion; and that a Council member may be removed "for cause" by the Secretary upon recommendation of the Council involved (by a two-thirds vote of its voting members).

The Committee wishes to make an additional point about the membership of the Councils. At the April 30 hearing one witness from the Pacific Northwest advocated that the various Indian Treaty Tribes, as both users and managers of the region's fishery resources, be given a permanent seat on the Pacific Fishery Management Council.

While the Committee is sympathetic to this appeal, it must note that similar requests by other user groups have been turned down in the past. Nevertheless, we believe it desirable to attempt to balance Tribal concerns with those of competing groups, and suggest

BEST DOCUMENT AVAILABLE

that the Treaty Tribes be given at least the same consideration as these other groups when council members are nominated and selected.

The State of Washington has taken the lead in this area by nominating a Tribal representative who was appointed by the Secretary. The Committee understands that the regular expression of Tribal views on the Pacific Council has been beneficial both in terms of fostering communication and stimulating Council discussion of a wider range of views on fishery management issues.

The Committee commends the State of Washington and encourages the other States involved to follow the practice of submitting Tribal nominees to the Secretary. We also commend the Secretary for this appointment and encourage the Commerce Department to continue the practice of insuring Tribal representation.

SECTION 9.—COUNCIL HEARINGS

This section clarifies Congressional intent that Regional Fishery Management Councils be permitted to hold hearings outside their statutory area of jurisdiction if the fishermen of another region have a direct interest in the topic under consideration.

The Committee also wishes to note that a consensus appears to have developed between the Regional Councils and the National Marine Fisheries Service on the method for deciding which fisheries require management plans. In light of this cooperative spirit, the Committee has decided not to change section 302(h)(1) of MFCMA.

On another point, the issue of travel reimbursement, the Committee intends that Regional Fishery Management Council members, Council committee and panel members, and Council employees be reimbursed for travel in accordance with Federal Travel Regulations as interpreted by the National Oceanic and Atmospheric Administration (NOAA). Therefore, it is important that the Councils fully consider the cost of attending Council meetings when determining the appropriate location and timing for these meetings. However, in view of the wide disparity in costs from one area to another, the Council chairmen (not NOAA) must have the authority to approve actual expenses for travel in excess of the High Rate Geographic Area (HRGA) rates up to the limit established in the NOAA regulations (presently $75 per day in the coterminous United States).

The Committee expects the Councils to be prudent in the exercise of this authority and to recognize that other travellers to Council meetings may be financially burdened or unable to attend, if meetings are frequently held in high cost areas.

Lastly, the Committee wishes to address one other financial aspect of Council operation. In the past, the National Marine Fisheries Service has shared a small portion of its appropriation with the States and Marine Fisheries Commission. This has been done to foster close cooperation between the Councils and the States, a goal which the Committee strongly supports. The Committee, therefore, wishes to express its endorsement for the continuation of these Liaison Grants by the National Marine Fisheries Service (NMFS).

BEST DOCUMENT AVAILABLE

SECTION 10.—DISCRETIONARY FUNCTIONS

This section gives the Regional Councils specific Congressional authority to comment on activities which affect any fishery resource under the Council's jurisdiction.

The Committee agrees that the Councils should be overseeing the well-being of these fishery resources on all fronts and commends the Councils for their diligence. However, the Committee also wishes to reemphasize that the Council's primary duty is not to act as a watchdog, but to provide sound management of the resource through the preparation of fishery management plans.

SECTION 11.—PUBLIC PARTICIPATION

This section exempts the Regional Councils from the Federal Advisory Committee Act (FACA). It also provides a very detailed and comprehensive public participation procedure which insures that the views of all interested parties will be heard in the fishery management process. This change will eliminate bureaucratic burdens now hindering Council operations without eroding the policy of public involvement reflected in FACA.

SECTION 12.—LIMITED ACCESS FEES

This section changes the Secretary of Commerce's authority to set the level of permit fees for U.S. fishermen by allowing fees to exceed the Secretary's costs of issuance under a limited access system.

SECTION 13.—REGULATIONS

This section specifies that when a Regional Council is preparing a fishery management plan, that plan shall include any fishery management regulations necessary for the plan's implementation. By combining the plan and regulations the Committee hopes to better coordinate and expedite the process by which the entire fishery management package is reviewed and implemented.

SECTION 14.—DATA COLLECTION PROGRAMS

This section gives the Regional Councils the specific authority to request the Secretary of Commerce to implement any biological data collection program which they believe would be helpful in the preparation of a fishery management plan.

The Committee also wishes to state that although it is limiting this authority to biological data at this time, the situation could change. A number of the Regional Councils have expressed a need for additional data on the economics of certain fisheries. The Committee is very reluctant to authorize the collection of this type of sensitive economic data due to potential problems with maintaining its confidentiality. Nevertheless, the Committee is sympathetic to the request of the Councils and encourages all sectors of the U.S. seafood industry to cooperate with the Councils to the greatest extent possible. If such cooperation is not forthcoming the Committee will feel compelled to reconsider the Councils' request.

BEST DOCUMENT AVAILABLE

SECTION 15.—ACTION BY THE SECRETARY

This section sets out the procedures to be followed by the Secretary of Commerce in conducting his review of fishery management plans submitted by the Regional Councils. Each plan must be determined to be consistent with the National Standards, other provisions of MFCMA, and any other applicable law.

The section provides for such plans to take effect 60 days after submission unless the Secretary acts to disapprove them. The Secretary may also formally state that he does not intend to disapprove the plan, in which case it will take effect prior to the end of the 60 day period.

It is the hope of the Committee that this "disapproval only" system will save time and speed up the review of all plans. In the past, it was not uncommon for some plans to take well over 6 months to finally be approved. This is far too slow when dealing with a living resource.

The Committee encourages the Secretary's office to coordinate with NOAA, NMFS, and their regional offices during the plan preparation process. Plans being submitted by the Councils should not be unknown quantities when they reach Washington, D.C. Further, it expected that the regional offices will work more closely with the Councils during plan development to assure that this provision will work as intended. Through regional office liaison with NMFS headquarters, it should be possible to determine in advance of receipt which plans will need extensive review and which are less controversial and can be treated more routinely. By diverting staff resources from the routine to the controversial plans, the review procedure for all plans can be expedited.

SECTION 16.—IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

This section requires the Secretary to promptly review and publish in the Federal Register the fishery management plans submitted by the regional councils. The bill provides a 30-day public comment period as part of the overall review process.

The section also provides that once a plan takes effect, the Secretary shall immediately promulgate the proposed regulations which accompany that plan.

The section also clarifies the circumstances and procedures for the implementation of emergency fishery regulations. Basically, emergency authority may be used by the Secretary whenever he declares that an emergency exists, regardless of whether a fishery management plan exists for the fishery in question.

The emergency authority of the councils works in two ways. A council may:

1. by majority vote declare an emergency and request the Secretary to promulgate emergency regulations; or
2. by unanimous vote declare an emergency and thereby require the Secretary to promulgate emergency regulations.

Emergency regulations promulgated under this section may remain in effect for two consecutive 90-day periods. However, the Committee wishes to stress that in making these changes in the emergency regulation process it does not intend to encourage the Councils and the Secretary to increase their use of this authority.

BEST DOCUMENT AVAILABLE

The use of emergency authority should be an infrequent exception to the regular management process. The Committee expects that when this authority is used it will remain in effect for only as long as it takes to produce a fishery management plan (or amendment) under the procedures provided in the act.

SECTION 17.—RELATIONSHIP TO OTHER LAWS

This section exempts the MFCMA from certain procedural and time requirements imposed by the following:

1. Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.);
2. Regulatory Flexibility Act (5 U.S.C. 601 et. seq.);
3. Executive Order 12291, dated February 17, 1981.

These exemptions are necessitated by the fact that the MFCMA is designed to provide effective management of living resources. Because of the changing nature of the resource, the delicate natural balance in which it exists, and the sometimes tenuous data base on which decisions must be made, it is often necessary to quickly implement changes in the regulatory policies governing these ocean resources. This need for speedy action is frequently at odds with the time and procedural requirements specified in the acts and Executive order listed above. The Committee has diligently tried to demonstrate in these amendments a respect for the public policy considerations reflected in the laws listed here. The Committee has also tried to limit the exemption from these laws to only those portions of the fishery management process with which they are most seriously incompatible.

SECTION 18.—STATE JURISDICTION

This amendment to the act addresses a problem between State and Federal management jurisdiction in geographic areas having very irregular, jagged coast lines (such as Alaska). There exist in these areas pockets of Federal waters which are surrounded by State waters. This obviously creates an unmanageable jurisdictional conflict. The Committee's suggested solution to this conflict is to treat such pockets of Federal waters as being under the jurisdiction and authority of the State involved.

SECTION 19.—OFFENSES

This section eliminates the penalty currently found in the act which permits the imprisonment of the operator of a foreign vessel which conducts fishing operations in the U.S. fishery conservation zone without a valid permit or violates the terms of its fishing permit.

SECTION 20.—CIVIL FORFEITURES

The MFCMA currently permits the Secretary to seize any fish found on a vessel which is determined to be in violation of section 307 of the act. This amendment permits the Secretary to instead seize the fair market value of the fish. This change insures that the seizure will act not only as a penalty for the violator, but also as a benefit to the U.S. Government.

BEST DOCUMENT AVAILABLE

SECTION 21.—REPORTS

This section eliminates the requirements that the Councils file annual reports and that the Secretary file enforcement reports. These reports have been determined to be of little use either inside or outside Government.

SECTION 22.—FOREIGN FISHING OBSERVER

This section deals with the program under which U.S. observers are placed aboard foreign fishing vessels operating in the fishery conservation zone.

The amendment spells out the existing authority for observers in order to eliminate any doubts about Congressional intent. The purpose here is to make it clear that these observers are acting as representatives of the U.S. Government and are charged with the responsibility of determining whether foreign nations are, or are not, complying with U.S. fishery laws. The observers are also called upon to carry out certain fishery related scientific work so long as such work does not reduce the effectiveness of their compliance monitoring duties.

This section also makes changes in the structure and operation of the observer program itself. There has long been perceived a need for 100 percent observer coverage of foreign fishing vessels in the fishery conservation zone. This has not been possible due to the fact that the foreign fishing fees which pay for the program can only be spent pursuant to a specific appropriation. To eliminate this roadlock to full observer coverage, the Committee provides in this amendment that no appropriation be required, and that the Secretary be permitted to collect the necessary foreign fishing fees, deposit them in a revolving fund, and make payments as necessary. The Committee wishes to stress in the strongest terms that this program does not utilize U.S. tax dollars, and that the change being made will not result in any increased costs to the U.S. Government.

The amendment also provides for the creation of a unified Foreign Fishing Observer Fund which would incorporate observer activities from both the Magnuson Fishery Conservation and Management Act and the Atlantic Tunas Convention Act.

The Committee reiterates its support for the goal of 100 percent observer coverage and feels that this amendment is the only way of guaranteeing that this goal will be achieved.

SECTION 23.—NATURALLY SPAWNING ANADROMOUS FISH

Concern has been growing for a number of years about the decline in stocks of naturally spawning anadromous fish (the so-called "wild" stocks). The Committee shares this concern and agrees that the maintenance of healthy, naturally spawning stocks is important to preserving the health of the overall anadromous fish resource.

As a way of addressing this concern, the Committee has directed the regional councils, in section 23, to specify the effect which anadromous fish management plans will have on the naturally spawning stocks which fall within the purview of the plan. The

BEST DOCUMENT AVAILABLE

Committee does not intend that such a review discuss each discernible population of naturally spawning fish in a river system. However, the Committee does intend that the Councils address the plan's effect on those stocks which are determined to be of importance to the maintenance of a healthy, genetically diverse, anadromous fish resource in the region.

The Committee also wishes to note that both the Pacific Fishery Management Council and the North Pacific Fishery Management Council are in the process of preparing detailed management policies for naturally spawning anadromous fish. The Committee commends both Councils for taking this action, and encourages them to complete these policies and follow them as part of the regular process for management of the anadromous species under their jurisdiction.

The Committee would also like to comment on another issue relating to the content of fishery management plans which has been raised by fishermen from Alaska. They foresee potential problems which may result from the development of new fisheries for underutilized species in the north Pacific (as specifically mandated in the act). These concerns center on possible conflicts (primarily gear conflicts) between existing fisheries in the north Pacific and the new types of fisheries which are now developing.

The Committee shares this concern, and feels that the concept of balanced development, which is an underlying theme of the MFCMA should prevail. The Committee's paramount concern is that sound conservation and management principles continue to guide the Councils as they undertake development of these underutilized fisheries.

New development need not prejudice the traditional fisheries, and the Committee feels that the Council should continue to adjust for the traditional fisheries as bottomfish development goes forward.

The Committee is confident that the North Pacific Fishery Management Council will work diligently to prepare fishery management plans which will address these concerns, which will minimize conflicts, and which will provide the broadest and most equitable fishing rights to all parties.

SECTION 24.—TECHNICAL AND CONFORMING AMENDMENTS

This section amends the definition of "vessel of the United States" to correct a drafting problem in the original law. It also provides conforming amendments to section 307 of the MFCMA in light of the foreign recreational fishing amendment found in section 5 of this bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

BEST DOCUMENT AVAILABLE

THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

(16 U.S.C. 1801 et seq.)

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1)—(26) * * *

[(27) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.]

(27) The term "vessel of the United States" means—

(A) any vessel documented under the laws of the United States, or

(B) any vessel numbered in accordance with the Federal Boat Safety Act of 1971 (46 U.S.C. 1400 et seq.) and measuring less than 5 net tons.

* * * * * * *

SEC. 201. FOREIGN FISHING.

(a)—(d) * * *

(e)(1)—(2) * * *

(3)(A) If the Secretary of State, and the Secretary, find that understandings or agreements with a foreign nation or its nationals which are considered to be significant factors in the determination of allocations among foreign nations are not adequately complied with or fulfilled by the foreign nation or its nationals, then the Secretary of State, in cooperation with the Secretary, shall reduce such nation's allocation that is in effect on the date of such finding and such nation's future allocations in a manner and quantity which the Secretary of State finds to be appropriate.

(B) The following shall apply for purposes of administering subparagraph (A) with respect to any foreign nation:

(i) If on the date of the Secretary of State's finding, the foreign nation has harvested a portion, but not all, of the quantity of fish specified under any allocation, a reduction under subparagraph (A) for that allocation, shall be applied with respect to the quantity of fish not harvested as of such date.

(ii) The Secretary of State, in consultation with the Secretary, may reallocate any portion of any reduction made under subparagraph (A) among one or more foreign nations for which no such finding is applicable.

(iii) If the causes for a finding made pursuant to subparagraph (A) are eliminated in a timely fashion, the Secretary of State may return to the foreign nation all or part of that portion of any allocation reduced unde subparagraph (A) that was not reallocated under clause (ii).

(iv) No fee paid under section 204 shall be refunded or credited by the Secretary because of any reduction of allocation made under this paragraph.

(f)—(h) * * *

(i)(1)—(2) * * *

[(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific and other functions as the Sec-

BEST DOCUMENT AVAILABLE

retary deems necessary or appropriate to carry out the purposes of this Act.]

(3) United States observers, while aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific program relating to the conservation of living resources as the Secretary deems appropriate.

(4) * * *

[(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.]

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection and the program authorized by section 2 of the Act entitled "An Act to authorize appropriations for fiscal years 1981, 1982, and 1983 for the Atlantic Tunas Convention Act of 1975, and for other purposes," approved September 4, 1980 (16 U.S.C. 1827). All payments made by the Secretary to carry out either program shall be paid from the Fund. Sums in the Fund which are not currently needed shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(j) RECREATIONAL FISHING.—Notwithstanding any other provision of this title, fishing vessels of foreign nations which are not operated for profit may engage in recreational fishing within the fishery conservation zone and the waters within the boundaries of a State subject to obtaining such permits, paying such fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall respectively impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone and waters is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 305. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

* * * * * * *

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) * * *

(b)(1)—(2) * * *

(3) CONTENTS.—any application made under this subsection shall specify—

BEST DOCUMENT AVAILABLE

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear *hold capacity* and such other pertinent information with respect to characteristics of each such vessel as the secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3) the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

[(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.]

(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy or a summary of the application to the appropriate Council, upon its request.

(5) ACTION BY COUNCIL.—[After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall] *After receiving an application copy or summary under paragraph (4)(C), the Council may* prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6)—(12) * * *

(c) * * *

* * * * * * *

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.

(a) * * *

BEST DOCUMENT AVAILABLE

[(b) GUIDELINES.—The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.]

(b) The Secretary shall establish advisory guidelines, based on the national standards, to assist in the development of fishery management plans. Such guidelines shall not require mandatory compliance.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) ESTABLISHMENT.—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (at least one of whom shall be appointed from each such State).

(2) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (at least one of whom shall be appointed from each such State).

(3) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (at least one of whom shall be appointed from each such State).

(4) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (at least one of whom shall be appointed from each such State).

(5) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (at least one of whom shall be appointed from each such State).

BEST DOCUMENT AVAILABLE

(6) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall, have 13 voting members, including 8 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (at least one of whom shall be appointed from each such State).

(7) NORTH PACIFIC COUNCIL.—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary [pursuant to subsection (b)(1)(C)] *in accordance with subsection (b)(2)* (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(8) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).]

(8) WESTERN PACIFIC COUNCIL.—The Western Pacific Fishery Management Council shall consist of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the other Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) VOTING MEMBERS.—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

[(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable con-

BEST DOCUMENT AVAILABLE

stituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.]

(C) The members required to be appointed by the Secretary in accordance with subsection (b)(2).

(2) The members of each Council required to be appointed by the Secretary shall be appointed from a list of qualified individuals submitted by the Governor of each applicable constitutent State. Such list shall include the names and pertinent biographical data of not less than three individuals for each applicale vacancy who are knowledgeable or experienced with regard to the management, conservation, or rereational or commercial harvest of the fishery resources of the geographical area concerned. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the required knowledge or experience. If the Secretary determines that any individual is not qualified, he shall transmit this information to the appropriate Governor. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

[(2)] *(3)* Each voting member appointed to a Council [pursuant to paragraph (1)(C)] *by the Secretary in accordance with subsection (b)(2)* shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

[(3)] *(4)* Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(c)—(g) * * *

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

BEST DOCUMENT AVAILABLE

[(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;]

(1) in accordance with each determination under subsection (i), prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority that requires conservation and management through a fishery management plan and, from time to time, such amendments to each such plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B), and any fishery management plan or amendment transmitted to it under section 304(c)(2);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act *(and for purposes of this paragraph, the term 'geographical area concerned' may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area)*;

[(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;]

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

(5)—(6) * * *

(i) DISCRETIONARY FUNCTIONS.—Each Council may, in connection with its other functions and responsibilities, comment on any activity by any person or group or by any State or Federal agency that directly or indirectly affects any fishery resource for which the Council has responsibility. Not later than 45 days after receiving any such comment the head of any Federal agency concerned shall respond to the Council fully and in detail.

(j) PROCEDURES.—The Federal Advisory Committee Act (5 U.S.C. App. 1) shall not apply to the Councils, their scientific and statistical committees or their advisory councils. In order to assure public participation in its activities, each Council shall adopt the following procedures:

(1) Each Council shall establish its own procedures with respect to the purposes, duties, and composition of its subcommittees, scientific and statistical committee, and its advisory panels.

BEST DOCUMENT AVAILABLE

(2) Each Council meeting and each meeting of any scientific and statistical committee and each advisory panel shall be open to the public, except as provided in paragraph (7).

(3) Timely notice of each meeting of a Council shall be published in the Federal Register except that Councils may meet without such notice in the event that the chairman and the vice chairman determine that an emergency exists. If such a determination is made, public notice shall be given by appropriate publication in the newspapers having the widest circulation in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and by such other means as will result in wide publicity.

(4) Interested persons shall be permitted to present oral or written statements to the Council, the scientific and statistical committee, or any advisory panel of the Council.

(5) Subject to section 552(b) of title 5, United States Code, and guidelines concerning the confidentiality of data prescribed by the Secretary under section 303(d), the administrative record, including minutes (or other recording) of meetings, records, or other documents which were made available to or prepared for or by each Council, shall be available for public inspection and copying at a single location in the offices of the Council.

(6) Minutes of each meeting of a Council shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed. Copies of all reports received, issued, or approved by the Council shall be on file at the Council offices.

(7) Paragraphs (2), (4), (5), and (6) of this section shall not apply to any portion of a meeting of the Council, scienctific and statistical committee, or advisory panel that is closed to the public in accordance with this subsection. A Council may close all or any portion of a meeting to the public with the prior approval of the Secretary. The closure request shall be in writing and shall set forth the time and place of the meeting and the reason for closure. The Council shall provide notice of such closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting. A meeting may be closed to the public for reasons of foreign policy, or for discussion of personnel matters, privileged or confidential information, or other matters listed in section 552(b) of title 5, United States Code.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both; and

BEST DOCUMENT AVAILABLE

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States; [and]

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors[.]; *and*

(6) assess and specify the effect which the conservation and management measures of the plan will have on the major stocks of naturally spawning anadromous fish in the region.

(b) * * *

[(c) PROPOSED REGULATIONS.—Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 304 and 305.]

(c) PROPOSED REGULATIONS.—Any fishery management plan, or amendment to a plan, shall include any proposed regulations which it deems necessary and appropriate to carry out the plan or amendment. The proposed regulations shall be considered to be a part of the plan or amendment and shall be submitted to the Secretary along with the plan or amendment for review and implementation pursuant to sections 304 and 305.

(d) * * *

(e) * * *

BEST DOCUMENT AVAILABLE

(f) DATA COLLECTION PROGRAM.—(1) If a Council determines that additional biological resource information would be beneficial for the purposes of—

(A) determining whether a fishery management plan is needed for a fishery; or

(B) preparing a fishery management plan;

the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of biological resource information specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and he shall promulgate regulations to implement the program within 60 days of such determination.

SEC. 304. ACTION BY THE SECRETARY.

[(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b); and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.]

(a) ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.—(1) After the Secretary receives a fishery management plan, or amendment to a plan, which was prepared by a Council, the Secretary shall review such plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with the Secretary of State with respect to foreign fishing and the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) If, pursuant to such review, the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph (1), the Secretary shall notify the Council in writing of his disapproval or partial disapproval of the plan or amendment. Such notice shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistency; and

(C) recommendations concerning the actions required to be taken by the Council to conform such plan or amendment to the requirements of applicable law.

(3) Any plan or amendment shall be deemed to comply with the criteria set forth in paragraph (1) and shall enter into effect pursuant to section 305 if—

BEST DOCUMENT AVAILABLE

(A) the Secretary does not notify the Council in writing of his disapproval, or partial disapproval, of the plan or amendment within 60 days of his receipt of the plan or amendment; or

(B) prior to the expiration of the 60-day period, the Secretary notifies the Council in writing that he does not intend to disapprove, or partially disapprove, the plan or amendment.

(4) If the Secretary disapproves, or partially disapproves, a proposed plan or amendment from a Council, the Council shall submit a revised plan or amendment to the Secretary. Any plan or amendment submitted to the Secretary pursuant to this paragraph shall be reviewed by the Secretary under this section as if it were a new submisson, except that the time period specified in paragraph (3) shall be 45 days.

[(b) REVIEW BY THE SECRETARY.—The Secretary shall review any fishery management plan; and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with—

(1) the Secretary of State with respect to foreign fishing; and

(2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.]

[(c)] *(b)* PREPARATION BY THE SECRETARY.—(1) The Secretary may prepare in fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Conncil fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2).

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary changes in such plan or amendment, consistent with the national standards, the other provisions of this Act and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 303(b)(6), unless such system is first ap-

BEST DOCUMENT AVAILABLE

proved by a majority of the voting members, present and voting, of each appropriate Council.

[(d) ESTABLISHMENT OF FEES.—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.]

(c) FEES.—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b) (1) and (6). The level for fees imposed under a permit system pursuant to section 303(b)(1) shall not exceed the costs incurred by the Secretary in issuing the permits.

[(e)] *(d)* FISHERIES RESEARCH.—The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

[(f)] *(e)* MISCELLANEOUS DUTIES.—(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

[(a) IN GENERAL.—As soon as practicable after the Secretary—

(1) approves, pursuant to section 304(a) and (b), any fishery management plan or amendment; or

(2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) a notice of availability of such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.]

(a) IN GENERAL.—After the Secretary receives a fishery management plan or amendment from a Council pursuant to section 304(a), or prepares a plan or amendment, pursuant to section 304(b), he shall immediately publish the proposed regulations and a notice of availability of such plan or amendment in the Federal Register. Interested persons shall be afforded a period of not less than 30 days

BEST DOCUMENT AVAILABLE

after such publication within which to submit, in writing, data, views, or comments on the plan or amendment. The Secretary shall consider such data, views, and comments in conducting his review of the plan or amendment.

(b) HEARING.—The Secretary may schedule a hearing, in accordance with section 553, of title 5, United States Code, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(b) IMPLEMENTATION.—Immediately after a plan or amendment has entered into effect pursuant to section 304(a)(3)(A) or 304(a)(3)(B), the Secretary shall promulgate any regulations which are a part of the plan or amendment.

[(c) IMPLEMENTATION.—The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a), and

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.]

[(d)] *(c)* JUDICIAL REVIEW.—Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated: except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

[(e) EMERGENCY ACTIONS.—If the Secretary finds that an emergency involving any fishery resources exists, he may—

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repro-

BEST DOCUMENT AVAILABLE

mulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earler date by publication in the Federal Register of a notice of termination.]

(d) EMERGENCY ACTIONS.—(1) If the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, it may without regard to whether a fishery management plan exists for such fishery—

(A) request the secretary to promulgate emergency regulations under paragraph (1); and

(B) if it approves emergency regulations by unanimous vote of the members who are voting members, require the Secretary to promulgate such regulations to address the emergency.

(3) Any emergency regulation which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2)(B) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

[(f)] *(e)* ANNUAL REPORT.—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this Act during the preceding calendar year.

[(g)] *(f)* RESPONSIBILITY OF THE SECRETARY.—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

(g) INAPPLICABILITY OF CERTAIN LAWS TO CERTAIN PROCEDURAL AND TIME REQUIREMENTS.—Neither the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), or Executive Order Numbered 12291, dated February 17, 1981, shall affect in any manner or to any extent (A) the time limitations or procedural requirements specified in subsections (a), (b), (c), and (d), section 303(c) and (e), and section 304(a) as they apply to the functions of the Secretary under such provisions; or (B) the taking effect under subsection (c) of certain regulations proposed by a Council.

BEST DOCUMENT AVAILABLE

SEC. 306. STATE JURISDICTION.

(a) IN GENERAL.—Except as provided in subsection (b), nothing in this act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. *For purposes of this act, except as provided in subsection (b), the jurisdiction and authority of a State shall extend to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party.* No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) * * *

(c) * * *

SEC. 307. PROHIBITED ACTS.

It shall be unlawful—

(1)* * *

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

[(A) in fishing within the boundaries of any State;]

(A) in fishing within the boundaries of any State, except recreational fishing permitted under section 201(j);

(B) in fishing *except recreational fishing permitted under section 201(j),* within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c); or

(C) * * *

(3) * * *

* * * * * * *

SEC. 309. CRIMINAL OFFENSES.

(a) OFFENSES.—A person is guilty of an offense if he commits any act prohibited by—

(1) section 307(1) (D), (E), (F), or (H); or

(2) section 307(2).

(b) PUNISHMENT.—Any offense described in subsection (a)(1) is punishable by a fine of not more than $50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than $100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than $100,000, [or imprisonment for not more than 1 year, or both].

(c) JURISDICTION.—There is Federal jurisdiction over any offense described in this section.

BEST DOCUMENT AVAILABLE

SEC. 310. CIVIL FORFEITURES.

(a) IN GENERAL.—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish *(or the fair market value thereof)* taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish *(or the fair market value thereof)* shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b)—(e) * * *

SEC. 311. ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. [Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.]

(b)—(c) * * *

* * * * * * *

ACT OF SEPTEMBER 4, 1980 (P.L. 96-339)

SEC. 2. OBSERVER PROGRAM REGARDING CERTAIN FOREIGN FISHING.

(a)—(c) * * *

(d) FEES.—There is imposed for each year after 1980 on the owner or operator of each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a). [The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e).] *All fees collected by the Secretary under this subsection shall be deposited in the Foreign Fishing Observer Fund established under section 201(i) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821 (i)).*

[(e) FUND.—There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this section. The Fund shall consist of the fees deposited into it as required under subsection (d). All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently

BEST DOCUMENT AVAILABLE

needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.]

[(f)] *(e)* PROHIBITED ACTS.—(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g);

(B) to refuse to pay the fee imposed under subsection (d) after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976.

[(g)] *(f)* REGULATIONS.—The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

* * * * * * *

○